



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. R. S. Wyche
County Auditor
Gregg County
Longview, Texas

Dear Sir:

Opinion No. 0-1922

Re: County Commissioners' Court has no authority to contract for a public liability insurance policy for county hospital.

This will acknowledge receipt of your letter of February 14, 1940, in which you seek an opinion of this department upon the question therein presented. The pertinent parts of your inquiry are:

"Gregg county operates a county hospital and makes certain charges for so called private patients, using the charge of uniform hospital charges.

"An insurance policy has been issued by a local insurance company written by Saint Paul Mercury Indemnity Company of Saint Paul and is a regular owner's, landlord's and tenant's public liability policy. This policy insures the county against (a) injury to any of the employees of the hospital, (b) any outsider that may be injured on the premises.

"Has the county authority to have written such a policy and pay for same out of county funds?"

This department held in Opinion No. 0-355, dated March 6, 1939, written by Hon. Morris C. Hodges, Assistant Attorney General, that a Commissioners' Court did not have authority to contract for liability insurance on a car used by a county officer.

It is a well settled rule of law that the county is not liable for injuries sustained by reason of the tortious or negligent acts of its agents or employees in the absence of specific statute creating such liability. This proposition is borne out in the following authorities:

MUSSBAUM v. BELL COUNTY, 76 S. W. 450;
ANGELINA COUNTY v. BOND, 17 S. W. (2d) 338;
FLORIA v. GALVESTON COUNTY, 55 S. W. 540;
BRYAN v. LIBERTY COUNTY, 299 S. W. 503.

We have carefully reviewed the statutes and failed to find any specific statutory liability created against the county by the fact situation presented by you. It is fundamental that the county would have no authority to insure against a non-existent liability.

Article 3, Section 52 of our Constitution, denies the right of a county to lend its credit or grant public money in aid of any individual. We think this section is an express prohibition against the Commissioners' Court contracting for liability insurance covering injuries resulting from the acts of its employees.

It is the opinion of this department that the Commissioners' Court of your county has no authority to purchase the policy of insurance made the basis of your inquiry, nor to pay for the same out of county funds.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Lloyd Armstrong*
Lloyd Armstrong
Assistant

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APPROVED FEB 23, 1940

Gen. S. Mann
ATTORNEY GENERAL OF TEXAS

